

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ESTATE OF VALERIE YOUNG, et al.,

ECF Case

plaintiffs,

Case No.: 07-CV-06241 (LAK)

- against -

MOTION FOR SANCTIONS

STATE OF NEW YORK OFFICE OF MENTAL
RETARDATION AND DEVELOPMENTAL
DISABILITIES, et al.,

defendants.

PLEASE TAKE NOTICE THAT upon the accompanying Memorandum of Law and exhibits, including the Declaration of Jonathan Bauer, signed under penalty of perjury on May 13, 2008 and all pleadings and prior proceedings heretofore had herein, the Plaintiffs, by their attorneys, the Catafago Law Firm, PC and Jonathan Bauer, Esq. hereby move pursuant to the inherent authority of this Court to regulate these proceedings for an order:

1. Declaring that the logs of 15 minute checks of the decedent, Valerie Young, were destroyed or otherwise subjected to spoliation by defendants; and,
2. finding as a matter of law as an adverse inference that the decedent, Valerie Young, was maintained by defendants in a wheelchair, floor mat, bed, chair, other non-mobile condition without regular ambulation from November 5, 2004 up to and including the date of her death on June 19, 2005 and upon a trial directing that inference to the jury ; and,
3. permitting the plaintiff to advise the jury of the spoliation by defendants of the 15-minute checks log books; and/or in the alternative,
4. in the event that any defendant denies that he or she destroyed, participated in the destruction, and/or permitted or allowed the destruction or spoliation of

- the 15 minute checks log books, hold an evidentiary hearing to determine the responsible defendant or defendants; and,
5. an award of attorney fees in an amount to be determined after the determination of this motion for the time expended by plaintiffs' counsel in connection with this motion and any discovery proceedings necessitated by the spoliation of the subject documents.

Dated: New York, New York
May 13, 2008

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s/

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